

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Gissing North America LLC,
a Delaware limited liability company,

Debtor.

Chapter 11

Case No. 22-46160

Hon. Lisa S. Gretchko

Ref. Dkt Nos. 15, 22

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF
MITSUIYA INDUSTRIES CO., LTD. TO (I) EMERGENCY FIRST-DAY MOTION OF
DEBTORS FOR INTERIM AND FINAL ORDERS UNDER 11 U.S.C. §§ 105(A), 361, 362,
363, AND 364 AND FEDERAL BANKRUPTCY RULES 2002, 4001, 6004, 9006, AND
9014: (I) AUTHORIZING DEBTORS TO OBTAIN SECURED POSTPETITION
FINANCING AND USE CASH COLLATERAL; (II) GRANTING ADEQUATE
PROTECTION; (III) AUTHORIZING AND APPROVING ACCOMMODATION AND
ACCESS AGREEMENTS; (IV) MODIFYING THE AUTOMATIC STAY; (V) SETTING
FINAL HEARING; AND (VI) GRANTING RELATED RELIEF**

Mitsuiya Industries Co., Ltd. (“**Mitsuiya**”), a party-in-interest herein and by and through its undersigned counsel, files this limited objection and reservation of rights (the “**Limited Objection**”) to (A) the *Emergency First-Day Motion of Debtors for Interim and Final Orders under 11 U.S.C. §§ 105(a), 361, 362, 363, and 364 and Federal Bankruptcy Rules 2002, 4001, 6004, 9006, and 9014: (I) Authorizing Debtors to Obtain Secured Postpetition Financing and Use Cash Collateral; (II) Granting Adequate Protection; (III) Authorizing and Approving Accommodation and Access Agreements; (IV) Modifying the Automatic Stay; (V) Setting Final Hearing; and (VI) Granting Related Relief* [Docket No. 15] and (B) the *Supplemental Exhibits* thereto [Docket No. 22] (collectively, the “**DIP Motion**”), and respectfully states as follows:

PRELIMINARY STATEMENT AND BACKGROUND

1. Mitsuiya and several of the Debtors¹ are currently engaged in litigation surrounding the identified Debtors' alleged improper use of proprietary technology and trade secrets belonging to Mitsuiya.

2. On May 28, 2020, Mitsuiya filed the *First Amended Complaint and Demand for Jury Trial* [E.D. Mich. Docket No. 23] (the “**Complaint**”)² in the United States District Court for the Eastern District of Michigan, Southern Division, Case No. 20-cv-10941-TGB-TSW, asserting, *inter alia*, claims for misappropriation of trade secrets against several of the Debtors under statutes of the States of Maine and Michigan as well as federal law.

3. As described more fully in the Complaint, Mitsuiya alleges that, given there is no license currently in place for their usage, the identified Debtors are misappropriating Mitsuiya's proprietary technology and trade secrets, including, without limitation, Composition, Material Formulae, Manufacturing Conditions, Mold Conditions, Design, and Manufacturing Process used for manufacturing and assembling fender liners, wheel liners, surface carpets, and spare tire covers.

4. On August 8, 2022 (the “**Petition Date**”), Gissing North America LLC and seven (7) affiliated companies (collectively, the “**Debtors**”) each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Eastern District of Michigan (the “**Court**”).

5. On the Petition Date, the Debtors filed the DIP Motion, seeking, *inter alia*, postpetition financing and use of cash collateral along with support from certain of the Debtors' major customers in the form of an accommodation agreement. As set forth in the DIP Motion,

¹ Specifically, Gissing Auburn, LLC, Gissing North America, LLC, Gissing Sidney LLC, and Gissing Technologies, LLC.

² A copy of the Complaint is attached hereto as **Exhibit A**.

the Debtors propose to secure the proposed financing and other financial accommodations by a first priority lien on substantially all of the Debtors' assets, as well as granting replacement liens to the Debtors' prepetition lenders on all of the Debtors' assets.

OBJECTION AND RESERVATION OF RIGHTS

6. Mitsuiya objects to the proposed DIP financing to the extent that it proposes to grant a lien on intellectual property rights purported to be held by the Debtors with respect to Mitsuiya's intellectual property as collateral for the proposed postpetition financing and use of cash collateral.

7. Mitsuiya unequivocally does not consent to the granting of any liens on its intellectual property to the proposed DIP lenders. Given that the dispute regarding the alleged misappropriation of Mitsuiya's intellectual property, at least as to the non-Debtor defendants thereto, is ongoing, it would be wholly inappropriate to grant liens on these purported assets of the Debtors at this time.

8. Mitsuiya requests that any order the Court may enter on the DIP Motion contain the following sentence:

Notwithstanding anything contained in this Order or the attachments hereto, (a) the DIP Lenders are not granted a lien on any assets that are not property of the Debtors' bankruptcy estates, and (b) the Court makes no findings or conclusions whether or not rights to Mitsuiya's intellectual property are or are not property of the Debtors' bankruptcy estates, and all parties' rights are reserved relating thereto.

9. Mitsuiya reserves the right to amend, modify or supplement this Limited Objection and further reserves all other rights, including the right to seek relief from this Court.

CONCLUSION

WHEREFORE, Mitsuiya respectfully requests that the Court limit the granting of any lien in connection with the proposed DIP Motion as requested herein, and grant such other and further relief as may be just and proper.

Date: August 10, 2022

Respectfully submitted,
Allard & Fish P.C.

/s/ Deborah L. Fish
Deborah L. Fish
1001 Woodward Avenue, Suite 850
Detroit, MI 48226
Tel: (313) 309-3171
Email: dfish@allardfishpc.com

and

GREENBERG TRAURIG, LLP
Nancy A. Peterman
77 West Wacker Drive, Suite 3100
Chicago, IL 60601
Tel: (312) 456-8400
Email: PetermanN@gtlaw.com

Counsel for Mitsuiya Industries, Co., Ltd.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10th day of August 2022, the undersigned caused a true and correct copy of the foregoing Limited Objection to be served via the Court's electronic case filing system (ECF) on all parties to this proceeding who have so-subscribed.

/s/ Deborah L. Fish

Deborah L. Fish

Exhibit A

**First Amended Complaint and Demand for Jury Trial filed by Mitsuiya in the United
States District Court for the Eastern District of Michigan, Southern Division,
Case No. 20-cv-10941-TGB-TSW**